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FILED

08 MAR 10 PM 2:00

CLERK U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

4 Robert G. Nadalin, Esq.  
 5 Cal. State Bar No. 222489  
 Attorney for Mr. Sean Ngoc Vo

*JGK*

DEPUTY

6 UNITED STATES DISTRICT COURT  
 7 SOUTHERN DISTRICT OF CALIFORNIA

8 Sean Ngoc Vo,

Civil No. '08 CV 444 J POR

9 Plaintiff,

Agency No. HCM2007641082

10 v.

11 COMPLAINT FOR A WRIT  
IN THE NATURE OF MANDAMUS12 Condoleezza Rice,  
 Secretary of State of the United States,13 Kenneth J. Fairfax, Consul General  
 Consulate General of the United States,  
 Ho Chi Minh City, Vietnam16 Jeffrey C. Schwenk, Consular Section Chief  
 Consulate General of the United States,  
 Ho Chi Minh City, Vietnam

18 Defendants.

20 Plaintiff, by his attorney, complaining of Defendants, alleges as follows:

21 1.) Plaintiff, Sean Ngoc Vo is an individual and petitioner for a fiancé visa who resides  
 22 within the jurisdiction of this Court. Plaintiff's claim to relief arises under 8 U.S.C. §  
 23 1184(d).

25 2.) Defendant Condoleezza Rice is the Secretary of State of the United States and is  
 26 sued herein in her official capacity. Defendant Rice is responsible for the administration  
 27 of the Immigration and Nationality Act as it relates to American consular officers. 8  
 28 U.S.C. § 1104. Her rulings on matters of law are binding on American consular officers.

*UR*

1 22 C.F.R. § 41.121(d). Kenneth J. Fairfax is the Consul General assigned to the  
2 Consulate General of the United States in Ho Chi Minh City, Vietnam, and Jeffrey C.  
3 Schwenk is the Consular Section Chief at the same place, both under the jurisdiction of  
4 Defendant Rice. These defendants are also sued in their official capacities. Plaintiff  
5 alleges, on information and belief, that all Defendants have a role in the visa issuance  
6 process as relates herein.

8 3.) The Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. §  
9 1361, 28 U.S.C. § 1651, 28 U.S.C. § 2201 and 5 U.S.C. § 701 et seq., and relief is  
10 requested pursuant to these statutes.

11 4.) On March 31, 2006, Plaintiff petitioned for K-1 visa status on behalf of his fiancé,  
12 Phuc T. Le, pursuant to 8 U.S.C. § 1184(d) with the USCIS California Service Center in  
13 Laguna Niguel, California. The USCIS Receipt Number assigned to this case is: WAC-  
14 06-140-50106 [A099 442 127]. After a long delay, and the filing of a mandamus  
15 complaint against the Department of Homeland Security, which was later dismissed  
16 without prejudice, the petition was approved on June 26, 2007.

17 5.) On or about September 6, 2007, Ms. Phuc T. Le, the beneficiary of the petition, was  
18 interviewed at the Consulate. At the interview the consular officer requested the birth  
19 certificates of Ms. Le's parents and of Mr. Vo's parents. On or about September 20 ,2007,  
20 Ms. Le submitted all of the requested papers to the Consulate.

21 6.) Between September 20, 2007 and the present, Ms. Le has called the Consulate  
22 numerous times. The Consulate has consistently refused to provide any estimate as to  
23 when the visa application may be adjudicated.

24 7.) On or about December 7, 2007, and February 19, 2008, Mr. Vo called the Consulate.  
25 On February 19, he spoke with Officer 67. Both times, the Consulate refused to provide  
26

1 any estimate as to when the visa application may be adjudicated.

2 8.) On November 29, 2007, December 17, 2007, January 31, 2008, February 11, 2008,  
3 and February 20, 2008, Attorney Robert Nadalin submitted e-mail inquiries as well as an  
4 inquiry sent via Federal Express to inquire as to the status of the pending visa application  
5 pursuant to a request that the case be completed as soon as possible. The Consulate has  
6 consistently refused to take any action on the pending visa application or to provide any  
7 estimate as to when the visa application may be adjudicated.

8 9.) The State Department maintains a website listing estimated visa processing dates. As  
10 of March 10, 2008, the processing date for all visas was listed as one day. This website  
11 does contain a note marked by three asterisks to note that the stated processing time does  
12 not include estimates for fiancé visa (K-visa) processing. It is not clear as to why the  
13 Consulate can adjudicate all other visa applications in one day but has not been able to  
14 adjudicate the visa application of Ms. Le more than 6 months after the date of her in-  
15 person interview.

16 17 10.) The petitioner and beneficiary have now waited almost two years for the completion  
18 of the fiancé visa process. The Consulate's refusal to adjudicate the case or to provide any  
19 kind of estimation as to when it may reasonably be expected to be adjudicated is as a  
20 matter of law, arbitrary and not in accordance with the law, and violates standards of  
21 fundamental fairness by providing no further notice of when the case may be completed.  
22 The delay in the adjudication of this matter is unreasonable as it makes it impossible for  
23 Mr. Vo and Ms. Le to know when, if ever, they may be allowed to marry in the U.S. This  
24 impacts their ability to plan for an array of matters of great personal importance including  
25 starting a family, career planning, and establishing a joint residence.

26 27 28 11.) Defendants have a duty to adjudicate this application. Id.

- 1 12.) Plaintiff has exhausted his administrative remedies.  
2 13.) Defendants' refusal to act in this case is, as a matter of law, arbitrary and not in  
3 accordance with the law.  
4 14.) Defendants are in violation of the Administrative Procedures Act, 5 U.S.C. § 701 et  
5 seq, are unlawfully withholding or unreasonably delaying action on Plaintiff's application  
6 and have failed to carry out the adjudicative functions delegated to them by law with  
7 regard to Plaintiff's case.

9 WHEREFORE, Plaintiff prays:

- 10 A. That the Defendants be ordered to have their agents process this case to a conclusion.  
11 B. For reasonable attorney's fees and  
12 C. For such other and further relief as to this court may seem proper.

14  
15 Dated: March 10, 2008

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18 Robert G. Nadalin  
Attorney for Sean Ngoc Vo

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UNITED STATES  
DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

# 148592 - SH  
\* \* C O P Y \* \*  
March 10, 2008  
15:03:50

Civ Fil Non-Pris  
USAO #: 08CV0444  
Judge.: NAPOLEON A JONES, JR  
Amount.: \$350.00 CK  
Check#: BC203

Total-> \$350.00

FROM: VO V. SEC OF STATE

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Sean Ngoc Vo

**DEFENDANTS** Condoleezza Rice, Secretary of State of the United States, Kenneth J. Fairfax, Consul General, Consulate General of the United States, Ho Chi Minh City, Vietnam, Jeffrey C. Schwank, Consular Section Chief, Consulate General of the United States, Ho Chi Minh City, Vietnam

County of Residence of First Listed Defendant

08 MAR 11 PM '08

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

DEPUTY

Attorneys (If Known)

(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Robert G. Nadalin, The Law Offices of Robert Nadalin, P.O. Box 124594,  
San Diego, CA 92112. Tel. 619-234-8875

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- |   |   |
|---|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff            | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)             |
| <input checked="" type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity<br>(Indicate Citizenship of Parties in Item III) |

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF	DEF	PTF	DEF
<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 891 Agricultural Acts
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>		<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<b>Habeas Corpus:</b>	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN**

(Place an "X" in One Box Only)

- |   |   |  |   |  |   |  |
|---|---|--|---|--|---|--|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstituted or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |
|---|---|--|---|--|---|--|

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):  
**8 USC 1184(d), 28 USC 1331, 28 USC 1361****VI. CAUSE OF ACTION**Brief description of cause:  
Action in mandamus to compel administrative action**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23

## DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:  Yes  No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

3/10/2008

FOR OFFICE USE ONLY

RECEIPT # 148592AMOUNT \$360

APPLYING IPP

JUDGE

MAG. JUDGE

81 3/10/08